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17/11/6

SCHEDULE

SECTION F - PAYMENT

In accordance with the provisions of clause 4 of the General Provisions of this contract entitled "ALLOWABLE COST, FIXED FEE, AND PAYMENT", the Government shall pay to the Contractor, as full compensation for the performance of this contract, the fixed fee as specified in Section E, above, and the Allowable Costs incurred by the Contractor in the performance of this contract and accepted by the Contracting Officer as chargeable in accordance with "Contract Cost Principles, Section XV, Part 2, Armed Services Procurement Regulation".

SECTION G - OVERHEAD

In accordance with Section F above, Allowable Costs shall include an amount for overhead, indirect charges, and other elements of cost, excluded from or not covered by direct costs, and properly chargeable as indirect costs in accordance with "Contract Cost Principles, Section XV, Part 2, Armed Services Procurement Regulation" and the application of such contract cost principles by the cognizant Department of Defense Audit Agency to the Contractor's operations under Department of Defense contracts in the Contractor's plant, and accepted by the Contracting Officer hereunder as being in accordance with such principles and such application.

SECTION H - NON-STANDARD COSTS

Allowable Costs shall include any unusual or non-standard items of cost, not expressly excluded by other provisions of this contract, as should, in the opinion of the Contracting Officer, be included in the cost of the work called for in this contract. Any such items shall be specifically certified by the Contracting Officer as being allowable under this section.

SECTION I - ANTICIPATORY COSTS

All costs which have been incurred by the Contractor on or after 10 January 1955, in anticipation of and prior to the signing of this contract, and which, if incurred after the signing of this contract, would have been considered as items of Allowable Cost hereunder, will be accepted by the Contracting Officer as costs under this contract.

SECTION J - PERIOD OF PERFORMANCE

The performance of work hereunder shall be completed by 15 October 1959.

GENERAL PROVISIONS

1. DEFINITIONS (ASPR 7-103.1 AFPI 7-403.1)

As used throughout this contract, the following terms shall have the meanings set forth below:

(a) The term "Secretary" means the Secretary, the Under Secretary, or any Assistant Secretary of the Department and the head or any assistant head of the executive agency; and the term "his duly authorized representative" means any person or persons or board (other than the Contracting Officer) authorized to act for the Secretary.

(b) The term "Contracting Officer" means the person executing this contract on behalf of the Government, and any other officer or civilian employee who is a properly designated Contracting Officer; and the term includes, except as otherwise provided in this contract, the authorized representative of a Contracting Officer acting within the limits of his authority.

(c) Except as otherwise provided in this contract, the term "subcontracts" includes purchase orders under this contract.

(d) (AFPI 7-303.1) The term "contract work" means all work to be performed under this contract including any studies covering fundamental, theoretical, or experimental investigations; any extension of the investigative findings and theories of a scientific or technical nature into practical application; any tangible items, hereinafter referred to as "supplies," furnished to the Government; and any reports, data, computations, plans, drawings, and specifications with respect to any of the foregoing.

2. CHANGES (AFPI 7-403.2)

The Contracting Officer may at any time by a written order, make changes in or additions to the drawings and specifications, issue additional instructions, require additional work within the general scope of the contract, or change the place of delivery, method of shipment, or the amount of Government-Furnished property. If any such change causes an increase or decrease in the estimated cost of, or the time required for performance of this contract, or otherwise affects any

other provision of this contract, an equitable adjustment shall be made (i) in the estimated cost or delivery schedule, or both, (ii) in the amount of any fixed fee to be paid to the Contractor, and (iii) in such other provisions of the contract as may be so affected, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within sixty (60) days from the date of receipt by the Contractor of the notification of change; Provided, however, That the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

3. LIMITATION OF COST (ASPR 7-203.3 AFPI 7-403.3)

(a) It is estimated that the total cost to the Government, exclusive of any fixed fee, for the performance of this contract will not exceed the estimated cost set forth in the Schedule, and the Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within such estimated cost. If at any time the Contractor has reason to believe that the costs which it expects to incur in the performance of this contract in the next succeeding thirty (30) days, when added to all costs previously incurred, will exceed [redacted] of the estimated cost then set forth in the Schedule, or if at any time, the Contractor has reason to believe that the total cost to the Government, exclusive of any fixed fee, for the performance of this contract will be substantially greater or less than the then estimated cost thereof, the Contractor shall notify the Contracting Officer in writing to that effect, giving its revised estimate of such total cost for the performance of this contract. STATINTL

(b) The Government shall not be obligated to reimburse the Contractor for costs incurred in excess of the estimated cost set forth in the Schedule and the Contractor shall not be obligated to continue performance under the contract or to incur costs in excess of the estimated cost set forth in the Schedule, unless and until the Contracting Officer shall have notified the Contractor in writing that such estimated cost has been increased and shall have specified in such notice a revised estimated cost which shall thereupon constitute the estimated cost of performance of this contract. When and to the

4. ALLOWABLE COST, FIXED FEE, AND PAYMENT

(a) For the performance of this contract, the Government shall pay to the Contractor the cost thereof determined by the Contracting Officer to be allowable in accordance with Part 2 of Section XV of the Armed Services Procurement Regulation as in effect on the date of this contract and the Schedule (hereinafter referred to as "Allowable Cost"), plus such fixed fee, if any, as may be provided for in the Schedule.

(b) Once each month (or at more frequent intervals, if approved by the Contracting Officer) the Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as such representative may require, an invoice or public voucher supported by a statement of cost incurred by the Contractor in the performance of this contract and claimed to constitute Allowable Cost. Each statement of cost shall be certified by an officer or other responsible official of the Contractor authorized by it to certify such statement.

(d) At any time or times prior to final payment under this contract the Contracting Officer may cause to be made such audit of the invoices or vouchers and statements of cost as shall be deemed necessary. Each payment theretofore made shall be subject to reduction to the extent of amounts included in the related invoice or voucher and statement of cost which are found by the Contracting Officer on the basis of such audit not to constitute Allowable Cost, and shall also be subject to reduction for

overpayment or to increase for underpayments on preceding invoices or vouchers. On receipt of the voucher or invoice designated by the Contractor as the "completion voucher" or "completion invoice" and statement of cost, which shall be submitted by the Contractor as promptly as may be practicable following completion of the work under this contract but in no event later than one (1) year (or such longer period as the Contracting Officer may, in his discretion, approve in writing) from the date of such completion, and following compliance by the Contractor with all provisions of this contract (including, without limitation, provisions relating to patents and the provisions of paragraphs (e) and (f) of this clause), the Government shall as promptly as may be practicable pay any balance of Allowable Cost.

(e) The Contractor and each assignee under an assignment entered into under this contract and in effect at the time of final payment under this contract shall execute and deliver at the time of and as a condition precedent to final payment under this contract, a release discharging the Government, its officers, agents and employees of and from all liabilities, obligations and claims arising out of or under this contract, subject only to the following exceptions:

- (1) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor.
- (2) Claims, together with reasonable expenses incidental thereto, based upon the liabilities of the Contractor to third parties arising out of the performance of the contract, which are not known to the Contractor on the date of the execution of the release, and of which the Contractor gives notice in writing to the Contracting Officer not more than six (6) years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier.
- (3) Claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of the contract relating to patents.

(f) The Contractor agrees that any refunds, rebates or credits (including any interest thereon) accruing to or received by the

Contractor or any assignee which arise out of the performance of this contract and on account of which the Contractor has received reimbursement shall be paid by the Contractor to the Government. The Contractor and each assignee under an assignment entered into under this contract and in effect at the time of final payment under this contract shall execute and deliver at the time of and as a condition precedent to final payment under this contract, an assignment to the Government of refunds, rebates or credits (including any interest thereon) arising out of the performance of this contract, in form and substance satisfactory to the Contracting Officer. Reasonable expenses incurred by the Contractor for the purpose of securing any such refunds, rebates or credits shall constitute Allowable Cost when approved by the Contracting Officer.

(g) Any cost incurred by the Contractor under the terms of this contract which would constitute Allowable Cost under the provisions of this clause shall be included in determining the amount payable under this contract, notwithstanding any provisions contained in the specifications or other documents incorporated in this contract by reference, designating services to be performed or materials to be furnished by the Contractor at its expense or without cost to the Government.

(h) Payment of the fixed fee shall be made to the Contractor as provided in the Schedule subject, however, to the withholding provisions of paragraph (c) hereof.

5. INSPECTION AND CORRECTION OF DEFECTS (AFPI 7-403.5)

(a) All work under this contract shall be subject to inspection and test by the Government, to the extent practicable at all reasonable times and places including the period of performance, and in any event prior to final acceptance. The Contractor shall provide and maintain an inspection system acceptable to the Government covering the work hereunder. The Government, through any authorized representative, may inspect the plant or plants of the Contractor or of any of its subcontractors engaged in the performance of this contract. If any inspection or test is made by the Government on the premise of the Contractor or a subcontractor, the Contractor shall provide and shall require subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government inspectors in the performance of their duties. All inspections and tests by the Government shall be performed in such a manner as will not unduly delay the work. Final inspection and acceptance by the Government shall be made as promptly as practicable after delivery. The time and place of delivery, final inspection, and acceptance shall be as set forth in the Schedule.

(b) The Contractor warrants that the services rendered in the performance of this contract will conform to the requirements of this contract and to high professional standards in the field and that any article delivered to the Government under this contract will conform

to the requirements of this contract and will not be defective in material or workmanship.

(c) At any time during performance of this contract, but not later than six (6) months (or such other period as may be provided in the schedule) after final acceptance, the Government may require the Contractor to remedy by correction or replacement as directed by the Contracting Officer, any failure by the Contractor to comply with its obligations under paragraph (b) hereof. Except as otherwise provided in paragraph (d) hereof, the cost of any such replacement or correction shall be included in "Allowable Cost" determined as provided in the clause of this contract entitled "Allowable Cost, Fixed Fee and Payment," but no additional fee shall be payable with respect thereto. Corrected articles shall not be tendered again for acceptance unless the former tender and the requirement of correction is disclosed. If the Contractor fails to proceed with reasonable promptness to perform such replacement or correction, the Government (i) may by contract or otherwise perform such replacement or correction and charge to the Contractor any increased cost occasioned the Government thereby, or may reduce any fixed fee payable under this contract (or require repayment of any fixed fee theretofore paid) in such amount as may be equitable under the circumstances; or (ii) in the case of articles not delivered, may require the delivery of such articles and shall have the right to reduce any fixed fee payable under this contract (or to require repayment of any fixed fee theretofore paid) in such amount as may be equitable under the circumstances; or (iii) may terminate this contract for default as provided in the clause of this contract entitled "Termination." Failure to agree on the amount of any such increased cost to be charged to the Contractor or to such reduction in, or repayment of, the fixed fee shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes".

(d) Notwithstanding the provisions of paragraph (c) hereof, the Government may at any time require the contractor to remedy by correction or replacement, without cost to the Government, any failure by the Contractor to comply with its obligations under paragraph (b) hereof, if such failure is due to fraud, lack of good faith, or willful misconduct on the part of any of the contractor's directors or officers, or on the part of any of its managers, superintendents, or other equivalent representatives, who has supervision or direction of (i) all or substantially all of the Contractor's business; or (ii) all or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed; or (iii) a separate and complete major industrial operation in connection with the performance on this contract. Fraud, lack of good faith, or willful misconduct on the part of any of such supervisory personnel shall be deemed to include the selection of individual employees or the retention of employees after any of such supervisory personnel has reason to believe that such employees are habitually careless or otherwise unqualified.

(e) Corrected articles tendered as replacements shall be subject to the provisions of this clause in the same manner and to the same extent as supplies originally delivered under this contract.

(f) The Contractor shall make its records of all inspection work available to the Government during the performance of this contract and for such longer periods as may be specified in this contract.

(g) Except as provided in this clause and as may be provided in the Schedule, the Contractor shall have no obligation or liability to correct or replace supplies or lots of supplies which at the time of delivery are defective in materials or workmanship or otherwise not in conformity with the requirements of this contract.

6. ASSIGNMENT PROHIBITED

Neither this contract, nor any interest therein, nor any claim arising hereunder, shall be transferred or assigned by the Contractor to any other person.

7. RECORDS (ASPR 7-203.7 AFPI 7-403.7)

(a)(1) The Contractor agrees to maintain books, records, documents and other evidence pertaining to the costs and expenses of this contract hereinafter collectively called the "records") to the extent and in such detail as will properly reflect all net costs, direct and indirect of labor, materials, equipment, supplies and services, and other costs

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and expenses of whatever nature for which reimbursement is claimed under the provisions of this contract. The Contractor's accounting procedures and practices shall be subject to the approval of the Contracting Officer; provided, however, that no material change will be required to be made in the Contractor's accounting procedures and practices if they conform to generally accepted accounting practices and if the costs properly applicable to this contract are readily ascertainable therefrom.

(2) The Contractor agrees to make available at the office of the Contractor at all reasonable times during the period set forth in subparagraph (4) below any of the records for inspection, audit or reproduction by an authorized representative of the Contracting Officer.

(3) In the event the Contracting Officer or any of his duly authorized representatives determines that his audit of the amounts reimbursed under this contract as transportation charges will be made at a place other than the office of the Contractor, the Contractor agrees to deliver, with the reimbursement voucher covering such charges or as may be otherwise specified within two years after reimbursement of charges covered by any such voucher, to such representative as may be designated for that purpose through the Contracting Officer such documentary evidence in support of transportation costs as may be required by the Contracting Officer or any of his duly authorized representatives.

(4) Except for documentary evidence delivered to the Government pursuant to subparagraph (3) above, the Contractor shall preserve and make available its records for a period of six years (unless a longer period of time is provided by applicable statute) from the date of the voucher or invoice submitted by the Contractor after the completion of the work under the contract and designated by the Contractor as the "completion voucher" or "completion invoice" or, in the event this contract has been completely terminated, from the date of the termination settlement agreement; provided, however, the records which relate to (A) appeals under the clause of this contract entitled "Disputes", (B) litigation or the settlement of claims arising out of the performance of this contract, or (C) costs or expenses of the contract as to which exception has been taken by the Contracting Officer or any of his duly authorized representatives, shall be retained by the Contractor until such appeals, litigation, claims, or exceptions have been disposed of, but in no event for less than the six-year period mentioned above.

(5) Except for documentary evidence delivered pursuant to subparagraph (3) above, and the records described in the proviso of subparagraph (4) above, the Contractor may in fulfillment of its obligation to retain its records as required by this clause substitute photographs, microphotographs or other authentic reproductions of such records, after the expiration of two years following the last day of the month of reimbursement to the Contractor of the invoice or voucher

to which such records relate, unless a shorter period is authorized by the Contracting Officer with the concurrence of the Comptroller of the Contracting Government Agency or his authorized representatives.

(6) The provisions of this paragraph (a), including this subparagraph (6), shall be applicable to and included in each subcontract hereunder which is on a cost, cost-plus-a-fixed-fee, time-and-material or labor-hour basis.

(b) The Contractor further agrees to include in each of his subcontracts hereunder, other than those set forth in subparagraph (a) (6) above, a provision to the effect that the subcontractor agrees that the Contracting Officer or any of his duly authorized representatives, shall, until the expiration of three years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor involving transactions related to the subcontract. The term "subcontract," as used in this paragraph (b) only excludes (i) purchase orders not exceeding \$1,000 and (ii) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

8. SUBCONTRACTS (ASPR 7-203.8 AFPI 7-403.8)

(a) The Contractor shall give advance notification to the Contracting Officer of any proposed subcontract hereunder which (i) is on a cost or cost-plus-a-fixed-fee basis, or (ii) is on a fixed-price basis exceeding in dollar amount either \$25,000 or five percent (5%) of the total estimated cost of this contract.

(b) The Contractor shall not, without the prior written consent of the Contracting Officer, place any subcontract which (i) is on a cost or cost-plus-a-fixed-fee basis, or (ii) is on a fixed-price basis exceeding in dollar amount either \$25,000 or five percent (5%) of the total estimated cost of this contract, or (iii) provides for the fabrication, purchase, rental, installation or other acquisition, of any item of industrial facilities, or of special tooling having a value in excess of \$1,000, or (iv) is on a time-and-material or labor-hour basis, or (v) involves research and development work. The Contracting Officer may, in his discretion, ratify in writing any such subcontract; such action shall constitute the consent of the Contracting Officer as required by this paragraph (b).

(c) The Contractor agrees that no subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.

(d) The Contracting Officer may, in his discretion, specifically approve in writing any of the provisions of a subcontract. However, such approval or the consent of the Contracting Officer obtained as required by this clause shall not be construed to constitute a determination of the allowability of any cost under this contract, unless such approval specifically provides that it constitutes a determination of the allowability of such cost.

(e) The Contractor shall give the Contracting Officer immediate notice in writing of any action or suit filed, and prompt notice of any claim made against the Contractor by any subcontractor or vendor which, in the opinion of the Contractor, may result in litigation, related in any way to this contract with respect to which the Contractor may be entitled to reimbursement from the Government.

(f) (AFPI 7-203.8) The Contracting Officer may approve all or part of the Contractor's purchasing system and from time to time rescind or reinstate such approval. Such approval shall be deemed to fulfill the requirements for obtaining the Contracting Officer's consent to subcontracts as prescribed in paragraph (b) above.

9. UTILIZATION OF SMALL BUSINESS CONCERNS (ASPR 7-104.14 AFPI 7-403.9)

(a) It is the policy of the Government as declared by the Congress to bring about the greatest utilization of small business concerns which is consistent with efficient production.

(b) The Contractor agrees to accomplish the maximum amount of subcontracting to small business concerns that the Contractor finds to be consistent with the efficient performance of this contract.

10. TERMINATION (ASPR 8-702 AFPI 7-403.10)

(a) The performance of work under the contract may be terminated by the Government in accordance with this clause in whole, or from time to time in part, (1) whenever the Contractor shall default in performance of this contract in accordance with its terms (including in the term "default" any such failure by the Contractor to make progress in the prosecution of the work hereunder as endangers such performance), and shall fail to cure such default within a period of ten days (or such longer periods as the Contracting Officer may allow) after receipt from the Contracting Officer of a notice specifying the default, or (2) whenever for any reason the Contracting Officer shall determine that such termination is in the best interest of the Government. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying whether termination is for the default of the Contractor or for the convenience of the Government, the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective. If after notice of termination of this contract for default under (1) above, it is

determined that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor pursuant to the provisions of the clause of this contract relating to excusable delays, the Notice of Termination shall be deemed to have been issued under (2) above, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

(b) After receipt of a Notice of Termination and except as otherwise directed by the Contracting Officer, the Contractor shall (1) stop work under the contract on the date and to the extent specified in the Notice of Termination; (2) place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract as is not terminated; (3) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination; (4) assign to the Government, in the manner and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders or subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts; (5) with the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final and conclusive for all purposes of this clause, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts the cost of which would be reimbursable, in whole or in part, in accordance with the provisions of this contract; (6) transfer title (to the extent that title has not already been transferred) and, in the manner, to the extent, and at the times directed by the Contracting Officer, deliver to the Government (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in respect of the performance of, the work terminated by the Notice of Termination, (ii) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would be required to be furnished to the Government, and (iii) the jigs, dies, and fixtures, and other special tools and tooling acquired or manufactured for the performance of this contract for the cost of which the Contractor has been or will be reimbursed under this contract; (7) use its best efforts to sell in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in provision (6) of this paragraph, provided, however, that the Contractor (i) shall not be required to extend credit to any purchaser, and (ii) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer; and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the

Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Contracting Officer may direct; (8) complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and (9) take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Government has or may acquire an interest. The Contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the amount of the fixed-fee, or any item or reimbursable cost under this clause. At any time after expiration of the plant clearance period, as defined in Section VIII, Armed Services Procurement Regulation, as it may be amended from time to time, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the Government will accept title to such items and remove them or enter into a storage agreement covering the same, provided that the list submitted shall be subject to verification by the Contracting Officer upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

(c) After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer its termination claim in the form and with the certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than two years from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer upon request of the Contractor made in writing within such two-year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such two-year period or any extension thereof. Upon failure of the Contractor to submit its termination claim within the time allowed, the Contracting Officer may determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

(d) Subject to the provisions of paragraph (c), the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid (including an allowance for the fixed-fee) to the Contractor by reason of the total or partial termination of work pursuant to this clause. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount.

(e) In the event of the failure of the Contractor and the Contracting Officer to agree in whole or in part, as provided in paragraph (d) above, as to the amounts with respect to costs and fixed-fee, or as to the amount of the fixed-fee, to be paid to the Contractor in connection with the termination of work pursuant to this clause, the Contracting Officer shall determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall pay to the Contractor the amount determined as follows:

(1) If the settlement includes cost and fixed-fee

(i) There shall be included therein all costs and expenses reimbursable in accordance with this contract, not previously paid to the Contractor for the performance of this contract prior to the effective date of the Notice of Termination, and such of these costs as may continue for a reasonable time thereafter with the approval of or as directed by the Contracting Officer, provided, however, that the Contractor shall proceed as rapidly as practicable to discontinue such costs.

(ii) There shall be included therein so far as not included under (i) above, the cost of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph (b)(5) above, which are properly chargeable to the terminated portion of the contract.

(iii) There shall be included therein the reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of termination inventory; provided, however, that if the termination is for default of the Contractor there shall not be included any amounts for the preparation of the Contractor's settlement proposal.

(iv) There shall be included therein a portion of the fixed-fee payable under the contract determined as follows:

(A) In the event of the termination of this contract for the convenience of the Government and not for the default of the Contractor, there shall be paid a percentage of the fee equivalent to the percentage of the completion of work contemplated by the contract, less fixed-fee payments previously made hereunder.

(B) In the event of the termination of this contract for the default of the Contractor, the total fixed-fee payable shall be such proportionate part of the fee (or, if this contract is for articles of different types, of such part of the fee as is reasonably allocable to the type of articles under consideration) as the total number of articles delivered to and accepted by the Government bears to the total number of articles of a like kind called for by this contract.

If the amount determined under this paragraph is less than the total payment of fixed-fee theretofore made to the Contractor, the Contractor shall repay to the Government the excess amount.

(2) If the settlement includes only the fixed-fee, the amount thereof will be determined in accordance with subparagraph (e) (1)(iv) above.

(f) The Contractor shall have the right of appeal, under the clause of this contract entitled "Disputes," from any determination made by the Contracting Officer under paragraphs (c) or (e) above, except that if the Contractor has failed to submit its claim within the time provided in paragraph (c) above and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraph (c) or (e) above, the Government shall pay to the Contractor the following: (i) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or (ii) if an appeal has been taken, the amount finally determined on such appeal.

(g) In arriving at the amount due the Contractor under this clause there shall be deducted (1) all unliquidated advance or other unliquidated payments theretofore made to the Contractor, (2) any claim which the Government may have against the Contractor in connection with this contract, and (3) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold pursuant to the provisions of this clause and not otherwise recovered by or credited to the Government.

(h) In the event of a partial termination, the portion of the fixed-fee which is payable with respect to the work under the continued portion of the contract shall be equitably adjusted by agreement between the Contractor and the Contracting Officer, and such adjustment shall be evidenced by an amendment to this contract.

(i) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of the contract whenever in the opinion of the

Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand, together with interest computed at the rate of 6% per annum, for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government; provided, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition.

(j) The provisions of this clause relating to the fixed-fee shall be inapplicable if this contract does not provide for payment of a fixed-fee.

(k) Unless otherwise provided for in this contract, or by applicable statute, the Contractor from the effective date of termination and for a period of six years after final settlement under this contract, shall preserve and make available to the Government at all reasonable times at the office of the Contractor, but without direct charge to the Government, all its books, records, documents, and other evidence bearing on the cost and expenses of the Contractor under this contract and relating to the work terminated hereunder, or, to the extent approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions thereof.

11. EXCUSABLE DELAYS (ASPR 7-203.11 AFPI 7-303.10)

(a) The Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by the Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if such failure arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes include, but are not restricted to: acts of God or of the public enemy; acts of the Government; fires; floods, epidemics; quarantine restrictions; strikes; freight embargoes, unusually severe weather; and failure of subcontractors to perform or make progress due to such causes, unless the Contracting Officer shall have determined that the supplies or services to be furnished under the subcontract were obtainable from other sources and shall have ordered the Contractor in writing to procure such services or supplies from such other sources, and the Contractor shall have failed reasonably to comply with such order. Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of such failure and, if he shall determine that such failure was occasioned by any one or more of the said causes, the delivery schedule shall be revised accordingly, subject to the rights of the Government under the clause hereof entitled "Termination".

(b) If the Contractor becomes unable to complete the contract work and make delivery at the time specified in the Schedule because of technical difficulties, notwithstanding the exercise of good faith and diligent efforts in the performance of the work called for hereunder, it may give the Contracting Officer written notice of the anticipated default with reasons therefor. Such notice and reasons shall be delivered not less than forty-five (45) days before the completion date specified in the Schedule or within such time as the Contracting Officer deems sufficient. If such notice is duly given, then to the extent the interest of the Government makes an extension desirable the Contracting Officer may, in his discretion, extend the period of time specified in the Schedule for such period as he deems advisable, and this contract shall then be modified in writing accordingly.

12. DISPUTES (ASPR 7-103.12 AFPI 7-403.12)

(a) Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the Secretary. The decision of the Secretary or his duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

(b) This "Disputes" clause does not preclude consideration of law questions in connection with decisions provided for in paragraph (a) above: Provided, That nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

13. NOTICE AND ASSISTANCE REGARDING PATENT INFRINGEMENT (ASPR 9-104 AFPI 7-404.13)

The provisions of this clause shall be applicable only if the amount of this contract is in excess of \$5,000.

(a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent infringement based on the performance of this contract of which the Contractor has knowledge.

(b) In the event of litigation against the Government on account of any claim of patent infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Government, upon request, all evidence and information in possession of the Contractor pertaining to such litigation. Such evidence and information shall be furnished at the expense of the Government except in those cases in which the Contractor has agreed to indemnify the Government against the claim being asserted.

14. BUY AMERICAN ACT

The Contractor agrees that there will be delivered under this contract only such unmanufactured articles, materials and supplies (which term "articles, materials and supplies" is hereinafter referred to in this clause as "supplies") as have been mined or produced in the United States, and only such manufactured supplies as have been manufactured in the United States substantially all from supplies mined, produced, or manufactured, as the case may be, in the United States. Pursuant to the Buy American Act (41 U.S. Code 10a-6), the foregoing provision shall not apply (i) with respect to supplies excepted by the Secretary from the application of that Act, (ii) with respect to supplies for use outside the United States, or, (iii) with respect to the supplies to be delivered under this contract which are of a class or kind determined by the Secretary or his duly authorized representative not to be mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, or (iv) with respect to such supplies, from which the supplies to be delivered under this contract are manufactured, as are of a class or kind determined by the Secretary or his duly authorized representative not to be mined, or produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality: provided, That this exception (iv) shall not permit delivery of supplies manufactured outside the United States if such supplies are manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

(OFF Apr. 18, '58)

15. CONVICT LABOR (ASPR 12-203 AFPI 7-403.15)

In connection with the performance of work under this contract, the Contractor agrees not to employ any person undergoing sentence of imprisonment at hard labor.

16. EIGHT-HOUR LAW OF 1912 (ASPR 12-303.1 AFPI 7-403.16)

This contract, to the extent that it is of a character specified in the Eight-Hour Law of 1912 as amended (40 U.S. Code 324-326) and is not covered by the Walsh-Healey Public Contracts Act (41 U.S. Code 35-45), is subject to the following provisions and exceptions of said Eight-Hour Law of 1912, as amended, and to all other provisions and exceptions of said Law:

No laborer or mechanic doing any part of the work contemplated by this contract, in the employ of the Contractor or any subcontractor contracting for any part of the said work contemplated, shall be required or permitted to work more than eight hours in any one calendar day upon such work, except upon the condition that compensation is paid to such laborer or mechanic in accordance with the provisions of this clause. The wages of every laborer and mechanic employed by the Contractor or any subcontractor engaged in the performance of this contract shall be computed on a basic day rate of eight hours per day; and work in excess of eight hours per day is permitted only upon the condition that every such laborer and mechanic shall be compensated for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay. For each violation of the requirements of this clause a penalty of five dollars shall be imposed for each laborer or mechanic for every calendar day in which such employee is required or permitted to labor more than eight hours upon said work without receiving compensation computed in accordance with this clause, and all penalties thus imposed shall be withheld for the use and benefit of the Government.

17. NONDISCRIMINATION IN EMPLOYMENT (ASPR 12-802 AFPI 7-403.17)

(a) In connection with the performance of work under this contract, the Contractor agrees not to discriminate against any employee or applicant for employment because of race, religion, color, or national origin. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion/or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of the nondiscrimination clause.

(b) The Contractor further agrees to insert the foregoing provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

18. OFFICIALS NOT TO BENEFIT (ASPR-7-103.19 AFPI 7-403.18)

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

19. COVENANT AGAINST CONTINGENT FEES (ASPR 7-103.20 AFPI 7-403.19)

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

20. PATENT RIGHTS

(a) As used in this clause, the following terms shall have the meanings set forth below:

- (i) The term "Subject Invention" means any invention, improvement or discovery (whether or not patentable) conceived or first actually reduced to practice either (A) in the performance of the experimental developmental or research work called for under this contract, or (B) in the performance of any experimental, developmental or research work relating to the subject matter of this contract which was done upon the understanding that a contract would be awarded.
- (ii) The term "Technical Personnel" means any person employed by or working under contract with the Contractor (other than a subcontractor whose responsibilities with respect to rights accruing to the Government in inventions arising under subcontracts are set forth in paragraphs (f), (g) and (h) of this clause), provided that such person, by reason of the nature of his duties in connection with the performance of this contract, would reasonably be expected to make inventions.
- (iii) The terms "subcontract" and "subcontractor" means any subcontract or subcontractor of the contractor, and any lower-tier subcontract or subcontractor under this contract.

(b) The Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, nontransferable and royalty-free license to practice, and cause to be practiced for the Government throughout the world, each Subject Invention in the manufacture, use, and disposition according to law, of any article or material, and in the use of any method; provided, however, that with respect to (i) any Subject Invention made by other than Technical Personnel, (ii) any Subject Invention conceived prior to any performance of this contract as set forth in paragraph (a) above but first actually reduced to practice in the course of any such performance, and (iii) the practice of any Subject Invention in foreign countries, the said license and other rights hereinafter provided shall be to the extent of the Contractor's right to grant the same without incurring any obligation to pay royalties or other compensation to others solely on account of said grant. Nothing contained in this paragraph shall be deemed to grant any license under any invention other than a Subject Invention. Any license granted herein shall not convey any right to the Government to manufacture, have manufactured, or use any Subject Invention for the purpose of providing services or supplies to the general public in competition with the Contractor or the Contractor's commercial licensees in the licensed fields.

(c) The Contractor agrees as follows: (i) to make written disclosure promptly to the Contracting Officer of each Subject Invention which reasonably appears to be patentable and to exert all reasonable effort to make such disclosure not later than six months after first publication, public use or sale; (ii) to specify, at the time of such disclosure, whether or not said Subject Invention has been or will be claimed in a United States patent application and unless it thereafter notifies the Government to the contrary not later than eight months after first publication, public use or sale, to file or cause to be filed in due form and time a United States patent application covering each Subject Invention so specified; (iii) to the extent of the Contractor's right to do so, to deliver to the Contracting Officer such duly executed instruments (prepared by the Government) of assignment, application papers and rightful oaths as are necessary to vest in the Government the sole and exclusive ownership of, and the right to apply for and prosecute patent applications covering, each Subject Invention which the Contractor does not specify as aforesaid (or having so specified, thereafter notifies the Government to the contrary), subject, however, to the reservation of a non-exclusive and royalty-free license thereunder to the Contractor (and to its associated and affiliated companies, if any, within the corporate structure of which the Contractor is a part), which license shall be assignable to the successor of that part of the Contractor's business to which it pertains; (iv), to furnish promptly to the Contracting Officer on request an irrevocable power of attorney to inspect and make copies of each United States patent application as filed by or on behalf of the Contractor covering any Subject Invention; (v) in the event the Contractor elects not to continue prosecution of any such United States patent application filed by the Contractor, to so notify the Contracting Officer not less than sixty days before the expiration of the response period, and upon written request, to deliver to the Contracting Officer, to the extent of the Contractor's right to do so, a duly executed assignment to the Government of the entire rights to such patent application and any Subject Invention claimed therein subject to a reservation as specified in (iii) above; and (vi) to deliver to the Contracting Officer duly executed

instruments fully confirmatory of any license rights herein agreed to be granted to the Government. If, to the best of the Contractor's knowledge and belief, no inventions have been conceived or first actually reduced to practice under this contract, the Contractor shall so certify to the Contracting Officer.

(d) The Contractor agrees to and does hereby grant to the Government, to the full extent of the Contractor's right to do so without payment of compensation to others, the right to reproduce, use and disclose for governmental purposes (including the right to give to foreign governments for their use as the national interest of the United States may demand) all or any part of the reports, drawings, blueprints, data, and technical information specified to be delivered by the Contractor to the Government under this contract; provided, however, that nothing contained in this paragraph shall be deemed, directly or by implication, to grant any license under any patent now or hereafter issued or to grant any right to reproduce anything else called for by this contract.

(e) Until the Contractor has delivered to the Government the disclosures required by paragraph (c)(1) of this clause and the information as to any subcontractor required by paragraph (g) of this clause, there shall be withheld from final payment under this contract ten percent (10%) of the contract price, or \$5,000, whichever is smaller; provided, however, that the withholding of the aforesaid amount, or subsequent payment thereof to the Contractor, shall not be construed as a waiver of any rights accruing to the Government under this contract; and provided further, that any amount so withheld under this paragraph shall not be in addition to any amounts withheld under other provisions of this contract. This paragraph shall not be construed as requiring the Contractor to withhold any amounts from a subcontractor to enforce compliance with the patent provisions of a subcontract.

(f) The Contractor agrees to exert all reasonable effort to negotiate for the inclusion in any subcontract hereunder of \$3,000 or more, in which payment is to be made for experimental, developmental or research work, of this patent rights clause or one approved by the Contracting Officer. In the event of refusal by a subcontractor to accept such patent rights clause, the Contractor shall obtain the written authorization of the Contracting Officer (which authorization may be granted with respect to a particular subcontract) to proceed with the subcontract, and shall cooperate with the Government in the negotiation with such subcontractor of a mutually acceptable patent rights clause; provided, however, that the Contractor shall in any event require the subcontractor to grant to the Government patent rights under Subject Inventions of no less scope and on no less favorable terms than those which the Contractor has under such subcontracts, except that in no event shall the subcontractor be required to grant to the Government patent rights in excess of those herein agreed to be granted to the Government by the Contractor.

(g) The Contractor agrees to notify the Contracting Officer in writing of any subcontract containing a patent rights clause, to furnish to the Contracting Officer a copy of such clause, and promptly to notify the Contracting Officer when such subcontract is completed. It is understood that with respect to such subcontract clause, the Government is a third party beneficiary; and the Contractor hereby assigns to the Government all the rights that the Contractor would have to enforce the obligations of the subcontractor with respect to Subject Inventions. The Contractor shall not be obligated to enforce the agreements of any subcontractor hereunder relating to a patent rights clause in any subcontract.

(h) When the Contractor shows that it has been delayed in the performance of this contract by reason of its inability to obtain, under reasonable terms that include a suitable patent rights clause, a qualified subcontractor for any particular part, item or function of this contract for which the Contractor itself does not have available facilities or qualified personnel, the Contractor's delivery dates shall be extended for a period of time equal to the duration of such delay; and, upon request of the Contractor, the Contracting Officer shall determine to what extent, if any, an additional extension of the delivery dates, and an increase in contract price based upon additional costs incurred, are proper under the circumstances; and the contract shall be modified accordingly. If the Contractor, after exerting all reasonable effort, is unable to obtain a qualified subcontractor as set forth above, the Contractor may submit to the Contracting Officer a written request for waiver or modification of the requirement that a suitable patent rights clause be included in the subcontract. Such request shall specifically state that the Contractor has used all reasonable efforts to obtain such qualified subcontractor and shall cite the waiver or termination provision hereinafter set forth. If, within thirty-five (35) days after the date of receipt of such request for a waiver or modification of said requirement, the Contracting Officer shall fail to grant such request, the requirement shall be deemed to have been waived by the Government. If within such period the Contractor shall receive a written denial of such request by the Contracting Officer, this contract shall thereupon automatically terminate and the rights and obligations of the parties shall be governed by the provisions of the clause of this contract entitled "Termination" just as if a notice of termination had been delivered to the Contractor specifying that the contract was terminated for the convenience of the Government.

21. FOREIGN PATENT RIGHTS

The Contractor agrees, notwithstanding any other provision in this contract to the contrary, (1) to grant to the Government, upon request, title to the foreign rights in each Subject Invention (as defined in the clause of this contract entitled "Patent Rights"), (11) to inform the Contracting Officer, at the time of making the disclosure provided for

under the terms of paragraph (c)(1) of the clause of this contract entitled "Patent Rights," whether or not there has been a publication of such invention and if so, the date and identity of such publication and (iii) to deliver to the Contracting Officer such duly executed instruments (prepared by the Government) of assignment, application papers and rightful claims as are necessary to vest in the Government with respect to each Subject Invention (A) the sole and exclusive ownership in any foreign patent application and any patent that may issue thereon, and (B) the right to apply for and prosecute such foreign patent applications.

22. ~~GOVERNMENT PROPERTY~~ (ASPR 13-503 AFPI 7-403.21)

(a) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the property described in the Schedule or specifications, together with such related data and information as the Contractor may request and as may reasonably be required for the intended use of such property (hereinafter referred to as "Government-furnished Property"). The delivery or performance dates for the supplies or services to be furnished by the Contractor under this contract are based upon, the expectation that Government-furnished Property suitable for use will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet such delivery or performance dates. In the event that Government-furnished Property is not delivered to the Contractor by such time or times, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the delay occasioned the Contractor and shall

equitably adjust the estimated cost, fixed fee, or delivery or performance dates, or all of them, and any other contractual provisions affected by such delay, in accordance with the procedures provided for in the clause of this contract entitled "Changes." In the event that Government-furnished Property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt thereof notify the Contracting Officer of such fact and, as directed by the Contracting Officer, either (i) return such property at the Government's expense or otherwise dispose of the property or (ii) effect repairs or modifications. Upon completion of (i) or (ii) above, the Contracting Officer upon written request of the Contractor shall equitably adjust the estimated cost, fixed fee, or delivery or performance dates, or all of them, and any other contractual provision affected by the return or disposition, or the repair or modification, in accordance with the procedures provided for in the clause of this contract entitled "Changes." The foregoing provisions for adjustment are exclusive and the Government shall not be liable to suit for breach of contract by reason of any delay in delivery of Government-furnished Property or delivery of such property in a condition not suitable for its intended use.

(b) Title to all property furnished by the Government shall remain in the Government. Title to all property purchased by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the Government upon delivery of such property by the vendor. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in the Government upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of processing or use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the Government, whichever first occurs. All Government-furnished Property, together with all property acquired by the Contractor title to which vests in the Government under this paragraph, are subject to the provisions of this clause and are hereinafter collectively referred to as "Government Property."

(c) Title to the Government Property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government Property, or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty. The Contractor shall maintain adequate property control records of the Government Property and shall identify the Government Property as such in accordance with the requirements of the "Manual for Control of Government Property in Possession of Contractors" (Appendix B, Armed Services Procurement Regulation), as in effect on the date of the contract, which Manual is hereby incorporated by reference and made a part of this contract.

(d) The Government Property provided or furnished pursuant to the terms of this contract shall, unless otherwise provided herein, be used only for the performance of this contract.

(e) The Contractor shall maintain and administer, in accordance with sound industrial practice, a program for the maintenance, repair, protection and preservation of Government property, so as to assure its full availability and usefulness for the performance of this contract. The Contractor shall take all reasonable steps to comply with all appropriate directions or instructions which the Contracting Officer may prescribe as reasonably necessary for the protection of Government property.

(f) (1) The Contractor shall not be liable for any loss of or damage to the Government property, or for expenses incidental to such loss or damage, except that the Contractor shall be responsible for any such loss or damage (including expenses incidental thereto) (A) which results from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on the part of any of its managers, superintendents, or other equivalent representatives, who have supervision or direction of (I) all or substantially all of the Contractor's business, or (II) all or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed, or (III) a separate and complete major industrial operation in connection with the performance of this contract; or (B) which results from a failure on the part of the Contractor, due to the willful misconduct or lack of good faith on the part of any of its directors, officers, or other representatives mentioned in subparagraph (A) above, (I) to maintain and administer, in accordance with sound industrial practice, the program for maintenance, repair, protection and preservation of Government property as required by paragraph (e) hereof, or (II) to take all reasonable steps to comply with any appropriate written directions of the Contracting Officer under paragraph (e) hereof; or (C) for which the Contractor is otherwise responsible under the express terms of the clause or clauses designated in the Schedule; or (D) which results from a risk expressly required to be insured under this contract, but only to the extent of the insurance so required to be procured and maintained, or to the extent of insurance actually procured and maintained, whichever is greater; or (E) which results from a risk which is in fact covered by insurance or for which the Contract is otherwise reimbursed, but only to the extent of such insurance or reimbursement; provided that, if more than one of the above exceptions shall be applicable in any case, the Contractor's liability under any one exception shall not be limited by any other exception. This clause shall not be construed as relieving a subcontractor from liability for loss or destruction of or damage to Government property in its possession or control, except to the extent that the subcontract, with the prior approval of the Contracting Officer, provides for the relief of the subcontractor

from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of the prime contract.

(ii) The Contractor shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance, or any provision for a reserve, covering the risk of loss of or damage to the Government property, except to the extent that the Government may have required the Contractor to carry such insurance under any other provision of this contract.

(iii) Upon the happening of loss or destruction of or damage to the Government Property, the Contractor shall notify the Contracting Officer thereof, and shall communicate with the Loss and Salvage Organization, if any, now or hereafter designated by the Contracting Officer, and with the assistance of the Loss and Salvage Organization so designated (unless the Contracting Officer has designated that no such organization be employed), shall take all reasonable steps to protect the Government Property from further damage, separate the damaged and undamaged Government Property, put all the Government Property in the best possible order, and furnish to the Contracting Officer a statement of (A) the lost, destroyed and damaged Government Property, (B) the time and origin of the loss, destruction or damage, (C) all known interests in commingled property of which the Government Property is a part, and (D) the insurance, if any, covering any part of or interest in such commingled property. The Contractor shall make repairs and renovations of the damaged Government Property or take such other action, as the Contracting Officer directs.

(iv) In the event the Contractor is indemnified, reimbursed, or otherwise compensated for any loss or destruction of or damage to the Government Property, it shall use the proceeds to repair, renovate or replace the Government Property involved, or shall credit such proceeds against the cost of the work covered by the contract, or shall otherwise reimburse the Government, as directed by the Contracting Officer. The Contractor shall do nothing to prejudice the Government's right to recover against third parties for any such loss, destruction or damage and, upon the request of the Contracting Officer, shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where the subcontractor has not been relieved from liability for any loss or destruction of or damage to Government property, the Contractor shall enforce the liability of the subcontractor for such loss or destruction of or damage to the Government property for the benefit of the Government.

For use where applicable:

~~(v) In the event any aircraft are to be furnished under this contract, any loss or destruction of, or damage to, such aircraft or other Government property occurring in connection with operations of said aircraft will be governed by the clause of this contract captioned "Flight Risks", to the extent such clause is, by its terms, applicable.~~

(g) The Government shall at all reasonable times have access to the premises where any of the Government property is located.

(h) The Government Property shall remain in the possession of the Contractor for such period of time as is required for the performance of this contract unless the Contracting Officer determines that the interests of the Government require removal of such property. In such case the Contractor shall promptly take such action as the Contracting Officer may direct with respect to the removal and shipping of Government Property. In any such instance, the contract may be amended to accomplish an equitable adjustment in the terms and provisions thereof.

(i) Upon the completion of this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Contractor shall submit to the Contracting Officer in a form acceptable to him, inventory schedules covering all items of the Government Property not consumed in the performance of this contract or not theretofore delivered to the Government, and shall deliver or make such other disposal of such Government property as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the cost of the work covered by the contract or shall be paid in such manner as the Contracting Officer may direct. The foregoing provisions shall apply to scrap from Government Property provided, however, that the Contracting Officer may authorize or direct the Contractor to omit from such inventory schedules any scrap consisting of cutting and processing waste, such as chips, cuttings, borings, turnings, short ends, circles, trimmings, clippings, and remnants, and to dispose of such scrap in accordance with the Contractor's normal practice and account therefor as a part of general overhead or other reimbursable cost in accordance with the Contractor's established accounting procedures.

(j) Unless otherwise provided herein, the Government shall not be under any duty or obligation to restore or rehabilitate, or to pay the cost of the restoration or rehabilitation of the Contractor's plant or any portion thereof which is affected by the removal of any Government Property.

(k) Directions of the Contracting Officer and communications of the Contractor issued pursuant to this clause shall be in writing.

~~(l) As provided in paragraph (i) of the above clause, the Contracting Officer may, subject to Departmental procedures, authorize or approve use of the Contractor's established scrap disposal and accounting procedures whenever the amount and recoverable value of scrap from the Government property are relatively minor and the Contractor's established procedures for accumulating and disposing of scrap and crediting the proceeds thereof to general overhead or other general cost will permit the Government to share equitably in such scrap. Approved For Release 2002/06/13 : CIA-RDP81B00878R000300010003-0~~
~~most factor affecting reimbursement under the contract.~~

1. INSURANCE-LIABILITY TO THIRD PERSONS (ASPR 7-203.22 AFPI 7-403.22)

(a) The Contractor shall procure and thereafter maintain workmen's compensation, employer's liability, comprehensive general liability (bodily injury) and comprehensive automobile liability (bodily injury and property damage) insurance, with respect to performance under this contract, and such other insurance as the Contracting Officer may from time to time require with respect to performance under this contract; provided, that the Contractor in fulfillment of its obligation to procure workmen's compensation insurance may, with the approval of the Contracting Officer and pursuant to statutory authority, maintain a self-insurance program. All insurance required pursuant to the provisions of this paragraph shall be in such form, in such amounts, and for such periods of time as the Contracting Officer may from time to time require or approve, and with insurers approved by the Contracting Officer.

(b) The Contractor agrees, to the extent and in the manner required by the Contracting Officer, to submit for the approval of the Contracting Officer any other insurance maintained by the Contractor in connection with the performance of this contract and for which the Contractor seeks reimbursement hereunder.

(c) The Contractor shall be reimbursed: (i) for the portion allocable to this contract of the reasonable cost of insurance as required or approved pursuant to the provisions of this clause, and (ii) for liabilities to third persons for loss or for damage to property (other than property (A) owned, occupied or used by the Contractor or rented to the Contractor or (E) in the care, custody, or control of the Contractor), or for death or bodily injury, not compensated by insurance or otherwise, arising out of the performance of this contract, whether or not caused by the negligence of the Contractor, its agents, servants or employees, provided such liabilities are represented by final judgments or by settlements approved in writing by the Government, and expenses incidental to such liabilities, except liabilities (I) for which the Contractor is otherwise responsible under the express terms of the clause or clauses, if any, specified in the Schedule, or (II) with respect to which the Contractor has failed to insure as required or maintain insurance as approved by the Contracting Officer or (III) which results from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on the part of any of its managers, superintendents, or other equivalent representatives, who has supervision or direction of (1) all or substantially all of the Contractor's business, or (2) all or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed, or (3) a separate and complete major industrial operation in connection with the performance of this contract. The foregoing shall not restrict the right of the Contractor to be reimbursed for the cost of insurance maintained by the Contractor in connection with the performance of this contract, other than insurance required to be submitted for approval or required

to be procured and procured and maintained pursuant to the provisions of this clause, provided such cost would constitute Allowable Costs under the clause of this contract entitled "Allowable Cost, Fixed Fee and Payment."

(d) The Contractor shall give the Government or its representatives immediate notice of any suit or action filed, or prompt notice of any claim made, against the Contractor arising out of the performance of this contract, the cost and expense of which may be reimbursable to the Contractor under the provisions of this contract, and the risk of which is then uninsured or in which the amount claimed exceeds the amount of coverage. The Contractor shall furnish immediately to the Government copies of all pertinent papers received by the Contractor. If the amount of the liability claimed exceeds the amount of coverage, the Contractor shall authorize representatives of the Government to collaborate with counsel for the insurance carrier, if any, in settling or defending such claim. If the liability is not insured or covered by bond, the Contractor shall, if required by the Government, authorize representatives of the Government to settle or defend any such claim and to represent the Contractor in or take charge of any litigation in connection therewith; provided, however, that the Contractor may, at its own expense, be associated with the representatives of the Government in the settlement or defense of any such claim or litigation.

24. AUTHORIZATION AND CONSENT

The Government hereby gives its authorization and consent (without prejudice to its rights of indemnification, if such rights are provided for in this contract) for all use and manufacture, in the performance of this contract or any part hereof or any amendment hereto or any subcontract hereunder (including any lower-tier subcontract), of any patented invention (i) embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract, or (ii) utilized in the machinery, tools or methods the use of which results from compliance by the Contractor or the using subcontractor with (a) specifications or written provisions now or hereafter forming a part of this contract, or (b) specific written instructions given by the Contracting Officer directing the manner of performance.

25 EMPLOYMENT OF ALIENS

If this contract calls for furnishing or constructing aircraft, aircraft parts, or aeronautical accessories, no alien employed by the Contractor shall be permitted to have access to the plans or specifications, or the work under construction, or to participate in the contract trials, without the written consent beforehand of the Secretary or his duly authorized representative.

26. FILING OF PATENT APPLICATIONS

(a) While and so long as the subject matter of this contract is classified "Secret" or higher, the Contractor agrees that, before filing or causing to be filed a patent application disclosing any of said subject matter, it will refer the proposed application to the Contracting Officer for determination whether, for reasons of national security, such application should be kept secret or the issuance of a patent thereunder otherwise delayed, under pertinent statutes or regulations; and the Contractor agrees to observe any instructions given by the Contracting Officer in this regard, which instructions may include a direction not to file such application so long as the Contracting Officer considers that such filing would jeopardize national security. If the Contracting Officer directs the Contractor not to file such application, the Contractor may submit to the Contracting Officer a written request, addressed to the Secretary, for reconsideration of such direction, but pending action by the Secretary, the Contractor shall observe such instruction.

(b) While and so long as the subject matter of this contract is classified "Confidential", the Contractor agrees to furnish to the Contracting Officer, at the time of or prior to filing or causing to be filed a patent application disclosing any of said subject matter, a copy of such application for determination whether, for reasons of national security, such application should be kept secret or the issuance of a patent thereunder otherwise delayed, under pertinent statutes or regulations; and the Contractor agrees to observe any instructions of the Contracting Officer in this regard.

27. REPORTING OF ROYALTIES

If this contract is in an amount which exceeds \$10,000, the Contractor agrees to report in writing to the Contracting Officer, during the performance of this contract and prior to its completion or final statement, the amount of any royalties or royalty rates paid or to be paid by it directly to others in connection with the performance of this contract, together with the names and addresses of licensees to whom such payments are made and either the patent numbers involved or such other information as will permit identification of the patents or other basis on which royalties are to be paid. Where the Contractor's compliance with the foregoing reporting requirement is found by the Contracting Officer to be impracticable because of the size of the Contractor's business or because of the nature of its accounting procedures, the Contractor may furnish one or more reports, based on its established accounting periods and covering the entire contract period, of royalties in excess of \$1,000 (if computed on an annual basis) paid or to be paid to each licensee on the Contractor's over-all business, together with such other information as will permit identification of the patents or other basis on which royalties are to be paid, in which event the Contractor shall furnish the Contracting Officer, upon his request and at Government expense, an allocation of such royalty payments to Government business or to the work or supplies covered by this contract; reference to any such periodic royalty reports, previously furnished to any Government agency and covering the

period of performance of this contract, shall constitute compliance with the reporting requirement of this clause.

If this contract is in an amount which exceeds \$10,000, and no royalties or royalty rates are paid or to be paid directly to others under the circumstances set forth above, the Contractor agrees so to report in writing to the Contracting Officer prior to completion or final settlement of this contract.

28. COPYRIGHTS

(a) The Contractor agrees to and does hereby grant to the Government, and to its officers, agents and employees acting within the scope of their official duties, (i) a royalty-free, nonexclusive and irrevocable license to reproduce, translate, publish, use, and dispose of, and to authorize others so to do, all copyrightable material first produced or composed and delivered to the Government under this contract by the Contractor, its employees or any individual or concern specifically employed or assigned to originate and prepare such material; and (ii) a license as aforesaid under any and all copyrighted or copyrightable work not first produced or composed by the Contractor in the performance of this contract but which is incorporated in the material furnished under the contract, provided that such license shall be only to the extent the Contractor now has, or prior to completion or final settlement of the contract may acquire, the right to grant such license without becoming liable to pay compensation to others solely because of such grant.

(b) The Contractor agrees that it will exert all reasonable effort to advise the Contracting Officer, at the time of delivering any copyrightable or copyrighted work furnished under this contract, of any adversely held copyrighted or copyrightable material incorporated in any such work and of any invasion of the right of privacy therein contained.

(c) The Contractor agrees to report to the Contracting Officer, promptly and in reasonable written detail, any notice or claim of copyright infringement received by the Contractor with respect to any material delivered under this contract.

29. MILITARY SECURITY REQUIREMENTS

(a) The provisions of this clause shall apply to the extent that this contract involves access to security information classified "Top Secret", "Secret", or "Confidential".

(b) The Government shall notify the Contractor of the security classification of this contract and the elements thereof, and of any subsequent revisions in such security classification.

(c) To the extent the Government has indicated as of the date of this contract, or thereafter indicates, security classification under this contract as provided in paragraph (b) above, the Contractor shall safeguard all classified elements of this contract and shall provide and maintain a system of security controls within its own organization in accordance with the requirements of (i) the Department of Defense Industrial Security Manual for Safeguarding Classified Security Information as in effect on date of this contract, which Manual is hereby incorporated by reference and made a part of this contract, (ii) any amendments to said Manual required by the demands of national security as determined by the Government and made after the date of this contract, notice of which has been furnished to the Contractor by the Contracting Officer, and (iii) those provisions of written agreements entered into by the parties pertaining to the adaptation of the Manual to the Contractor's business.

(d) Designated representatives of the Contracting Officer responsible for inspection pertaining to industrial security shall have the right to inspect at reasonable intervals the procedures, methods, and facilities utilized by the Contractor in complying with the requirements of the terms and conditions of this clause. Should the Contracting Officer, through its authorized representative, determine that the Contractor has not complied with such requirements, the Contracting Officer shall inform the Contractor in writing of the proper actions to be taken in order to effect compliance with such requirements.

(e) If, subsequent to the date of this contract, the security classifications or requirements under this contract are changed by the Contracting Officer as provided in this clause, and if such change causes an increase or decrease in the estimated cost of performance of this contract, the estimated cost and fixed fee, shall, to the extent appropriate, be subject to an equitable adjustment. Any such equitable adjustment shall be accomplished in the manner set forth in the clause of this contract entitled "Changes".

(f) The Contractor agrees to insert, in all subcontracts hereunder which involve access to classified security information, provisions which shall conform substantially to the language of this clause, including this paragraph (f) but excluding paragraph (e) of this clause. The Contractor may insert in any such subcontract, and any such subcontract entered into thereunder may contain, in lieu of paragraph (e) of this clause, provisions which permit equitable adjustments to be made in the subcontract price or in the estimated cost and fixed fee of the subcontract (as appropriate to the type of subcontract involved) on account of changes in security classifications or requirements made under the provisions of this clause subsequent to the date of the subcontract involved.

(g) The Contractor also agrees that it shall determine that any subcontractor proposed by it for the furnishing of supplies and services which will involve access to classified security information in the Contractor's custody has been granted an appropriate facility security clearance, which is still in effect, prior to being accorded access to such classified security information.

30. WALSH-HEALEY PUBLIC CONTRACTS ACT

If this contract is for the manufacture or furnishing of materials, supplies, articles or equipment in an amount which exceeds or may exceed \$10,000 and is otherwise subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S. Code 35-45), there are hereby incorporated by reference all representations and stipulations required by said Act and regulations issued thereunder by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect.

31. GRATUITIES

(a) The Government may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this contract if it is found, after notice and hearing, by the Secretary or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the Government with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing, of such contract; provided, that the existence of the facts upon which the Secretary or his duly authorized representative makes such findings shall be in issue and may be reviewed in any competent court.

(b) In the event this contract is terminated as provided in paragraph (a) hereof, the Government shall be entitled (i) to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor, and (ii) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Secretary or his duly authorized representative) which shall be not less than three nor more than ten times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee.

(c) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

32. DELAY IN DELIVERY OF DATA

(a) It is understood that the efficient use by the Government of the supplies called for hereunder requires that the data called for hereunder be delivered not later than the time or respective times herein specified. If such data is not delivered at said time or times, the Government may at its election, so long as such data remains undelivered, unless the delay in delivery thereof arises out of causes beyond the control and without the fault or negligence of the Contractor within the meaning of the clause

hereof entitled "Default", withhold payment to the Contractor for any of the amounts then due, refuse approval of the Contractor's vouchers and refuse to accept further deliveries hereunder from the Contractor or take any other action authorized by law or regulation now or hereafter in effect including termination of the contract for default to the extent and in the manner authorized by said clause, and may take any or all of the foregoing actions separately or in combination.

(b) The provisions of this clause shall only be applicable to technical data, such as handbooks, service manuals, or other information necessary for the proper maintenance or servicing of the end items called for herein.

33. SUPERSEDING SPECIFICATIONS

All references in any Government Specification incorporated herein to other Government specifications shall be deemed to include all specifications supplementary to or superseding the specifications so referred to, to the extent that such supplementary or superseding specifications are in effect at the date of Contractor's latest quotation, if the Contractor was furnished or otherwise notified of the existence of such supplementary or superseding specification at the time of said quotation.

34. SHIPMENTS

(a) Mode of Shipment. Unless otherwise provided in this contract or unless the Contracting Officer, acting under the "Changes" clause hereof, directs in writing otherwise, all supplies to be furnished under this contract shall be delivered to the Government f.o.b. cars or carrier's equipment at the plant or plants (or the point or points nearest thereto that rail carrier service is available) at which such supplies are to be finally inspected. If the Contracting Officer directs in writing that any of the supplies to be furnished hereunder be shipped other than by rail, the Contractor shall be reimbursed for transportation costs incurred in transporting such supplies from its plant to the designated carrier.

(b) F.O.B. Carrier's Equipment. Whenever it is provided in this contract that supplies called for under this contract shall be delivered to the Government, f.o.b. Contractor's plant, any shipment occupying sufficient space in a railroad car to constitute a carload shipment subject to carload freight rates shall be properly and adequately loaded in freight cars by the Contractor and any shipment subject to less-than-carload freight rates shall be delivered by the Contractor into the carrier's possession at the Contractor's plant, or at the point or points nearest thereto at which delivery can be effected. All said shipments shall be made on Government bills of lading and the Contractor shall make application therefor to the Contracting Officer. In inserting descriptions in Government bills of lading, the Contractor shall comply with the rules and provisions of the freight classifications and tariffs of the carrier or carriers involved.

(c) F.O.B. Destination. Whenever it is provided in this contract that supplies shall be delivered f.o.b. specified destinations, such supplies shall be shipped direct by the Contractor to the specified destinations on commercial bills of lading, at the expense of the Contractor.

(d) Shipping Instructions. If not otherwise provided herein, names of consignees of all supplies to be delivered by the Contractor hereunder will be furnished to the Contractor in writing by the Contracting Officer at a later date. Request therefor shall be made to such address as the Contracting Officer may direct, not later than thirty (30) days prior to the date on which any of the articles are ready for shipment.

(e) Notice of Shipments. At the time of delivery of any shipment of supplies to a carrier for transportation, the Contractor shall give prepaid notice of shipment to the consignee establishment, and to such other persons or installations designated by the Contracting Officer, in accordance with instructions of the Contracting Officer. If such instructions have not been received by the Contractor at least 24 hours prior to such delivery to a carrier, the Contractor shall request instructions from the Contracting Officer concerning the notice of shipment to be given.

(f) Computation of Delivery Time. For the purpose of determining the fulfillment of this contract so far as delivery dates are concerned, in the event the delivery point or points are not the same as the point or points of destination, the time of delivery of the supplies shall be the date of delivery to the carrier ready for shipment to destination.

(g) Shipments by Government. Whenever any articles, supplies or other items are delivered by the Government to the Contractor, unless otherwise provided herein, they shall be delivered to the Contractor, f.o.b. cars or carrier's equipment at the plants of Contractor or the point or points nearest thereto that rail carrier service is available.

35. PAYMENT OF ROYALTIES

The Contractor shall not pay any sum for royalties or patent rights not included in the ordinary purchase price of parts embodied in the articles, if any, purchased hereunder unless and until duly authorized to make such payment by the Government, except royalties payable under the existing license agreements, if any, listed (with the patent numbers and the serial numbers of the patent application covered by said agreements and the rates of royalty thereunder) in Exhibit A hereto. Recognition of such royalties as are payable pursuant to such license agreements as items of Allowable Cost hereunder shall in no way constitute a recognition by the Government of the validity of any of the patents involved, nor shall any such recognition constitute a waiver of any rights or defenses respecting such patents.

36. REAL PROPERTY ACQUISITION, CONSTRUCTION, ALTERATION AND RESTORATION

(a) No action shall be initiated under this contract in connection with (i) the purchase, rental or other acquisition of real property, (ii) the construction or alteration of any building or other type of real property, or (iii) the installation or construction of facilities, until such action has been authorized by the appropriate authority and written notification of such authorization has been transmitted to the Contractor by the Contracting Officer, provided, that no such authorization shall be required in connection with any such actions which are chargeable to this contract through the indirect or overhead account, in accordance with the Contractor's established cost accounting procedures.

(b) At the election of the Contracting Officer, any property installed or constructed on land not owned or controlled by the Government may at any time be abandoned in place, and upon written notice to the Contractor by the Contracting Officer of such abandonment, all right, title and interest of the Government therein and all obligations of the Government with respect thereto shall cease.

(c) The Government shall not be under any duty or obligation to restore or rehabilitate or to pay the costs of the restoration or rehabilitation of the Contractor's plant or any portion thereof which is affected by the removal of any Government property, except as may be specifically provided in connection with any authorization granted under subparagraph (a) of this clause and reflected in the contract or in an amendment thereto, or as otherwise approved in writing by the Contracting Officer.

37. ALTERATIONS IN CONTRACT